

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

Cr. Appeal No. 319 of 1993.

Date of Decision: 13-12-2007.

State of H.P.

Versus

.....Appellant.

Mehar Chand and others. .

.....Respondents.

Coram

Hon'ble Mr. Justice Surjit Singh, J.

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting¹? .No.

For the appellant : Mr. S.D. Vasudeva, Additional Advocate General with Mr. D. S. Nainta, Deputy Advocate General.

For respondents : Mr. Ajay Sharma, Advocate

Surjit Singh, J. (oral)

Respondents were sent up for trial for offences punishable under Sections 323 and 326, Indian Penal Code, for allegedly causing injuries and grievous injuries to Laxmipal on 9-6-1991 at a place called Gugga Saloh in Palampur Sub Division. According to the prosecution story, on the aforesaid date around 10.00 a.m, when injured Laxmipal accompanied by Sat Pal (PW2) and one Rattan Lal his father's brother was clearing garbage from his land situate near the house of the respondents, respondent Champa Devi went there and questioned Laxmi Pal and his companions as to why the direction of the drain carrying foul water from their kitchen had been diverted and a banana tree felled. She was told by Laxmi Pal that let her husband Mehar Chand respondent come and talk to them. Champa Devi then went to her house and re-appeared with her husband Mehar Chand. Mehar Chand and Laxmi Pal had some talk.

Whether reporters of the Local papers are allowed to see the judgment? Yes.

Thereafter Mehar Chand went back to his house. After some time, Mehar Chand, accompanied by his wife Champa Devi and respondent Savitri, re-appeared at the scene. Savitri was carrying a Drat. She handed over that Drat to respondent Mehar Chand, then she held Laxmi Pal (PW1) by his testicles, respondent Champa Devi held him by his arm while Mehar Chand inflicted a blow of drat on the nose of Laxmi Pal. The blow resulted in fracture of bridge of the nose.

Trial Court charged the respondents for voluntarily causing hurts and grievous hurt to Laxmi Pal and on their pleading not guilty, tried them for the said offences. At the end of the trial, all the respondents were acquitted with the findings that it was not likely that the injury, in question, on the nose could have been caused with the drat and that the independent witnesses, available on the spot, had not been examined. Trial Court also observed that the plea of the respondents that Laxmi Pal (PW1) received the injury on the nose with a 'Phawra' which he himself was carrying, appears to be probable.

We have gone through the record and heard the learned Additional Advocate General.

Prosecution examined the injured as PW1 and one of the persons allegedly accompanying him, namely Sat Pal (PW2). Rattan Lal, father's brother of the injured who too was accompanying him had been given up. We find that Laxmi Pal (PW1) and Sat Pal (PW2) have given contradictory versions as to the manner in which the three respondents came to the spot and the role played by them in the commission of the crime. According to Laxmi Pal (PW1), first Champa Devi came and she quarreled with him for his having changed the direction of the drain and that when he told her to send her husband, Mehar Chand, her husband, came and he was able to convince him that the change in the direction of the drain was required for keeping his fields clear of garbage, but soon thereafter, Savitri

Devi, another respondent, appeared with a Drat and she was followed by Mehar Chand and Champa Devi respondents. Sat Pal (PW2), however, stated that initially Champa Devi came and quarreled with PW1 and when she was asked to send her husband, her husband respondent Mehar Chand came there and when Mehar Chand was still there, Savtri Devi came with a drat and handed it over to Mehar Chand and the latter then inflicted the blow. Again while PW1 stated that Savitri Devi held him by his testicles and Champa Devi by his left arm while the respondent Mehar Chand dealt a blow of drat on his nose, Sat Pal PW2 stated that Champa Devi held Laxmi pal by his waist. He did not say that Savitri Devi respondent held PW1 Laxmi Pal by his testicles or by any other part of the body.

The aforesaid contradictions apart, plea taken by the respondents that PW1 Laxmi Pal received the injury when the 'Phawra' which he was carrying to change the direction of the drain hit him in a scuffle with respondent Mehar Chand, is probablised by the evidence on record. Dr. V.K. Sood (PW3) who examined PW1 even though stated that the injury was possible with the drat Exhibit P4, i.e, alleged weapon of offence, at the same time he admitted that if the injuries were caused with drat Exhibit P4, some other injury was also supposed to have resulted on the face of PW1 Laxmi Pal. He admitted that the injury could have been received in a scuffle with a Phawra, held by PW1 himself.

For the foregoing reasons, we are not inclined to interfere with the judgment of acquittal rendered by the trial Magistrate. Hence the appeal is dismissed.

(Surjit Singh)
Judge.

(Surinder Singh)
Judge.

December 13, 2007.
(bm)

